

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

In re:

CHAPTER 7
Case No.

^{FILED}
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

KENNETH E. DIETERS,

95-21077KD

DEC 22 1995

Debtor

BARBARA A. EVERLY, CLERK

JUDGMENT

This proceeding having come on for trial or hearing before the court, the Honorable Paul J. Kilburg, United States Bankruptcy Judge, presiding, and the issues having been duly tried or heard and a decision having been rendered,

IT IS ORDERED AND ADJUDGED that for the reasons stated in the Order and pursuant to the record made, the Court finds that Debtor has sustained actual damages in the amount of \$1,000.

IT IS FURTHER ORDERED AND ADJUDGED that the Court finds that based upon the numerous post-petition contacts, punitive damages in the amount of \$2,000 should be awarded in favor of Debtor and against this Creditor.

IT IS FURTHER ORDERED AND ADJUDGED that judgment is entered in favor of Debtor Kenneth E. Dieters and against Creditor Bank of New York (Delaware), P.O. Box 1219, Newark, New Jersey 07101-1219 in the amount of \$1,000 as actual damages.

IT IS FURTHER ORDERED AND ADJUDGED that judgment is entered in favor of Debtor Kenneth E. Dieters and against Creditor Bank of New York (Delaware), P.O. Box 1219, Newark, New Jersey 07101-1219 in the amount of \$2,000 as punitive damages.

IT IS FURTHER ORDERED AND ADJUDGED that these sanctions are imposed in a Chapter 7 bankruptcy and imposed post-petition, this judgment is not an asset of the estate but is an asset of Debtor subject to collection by Debtor individually.

Recorded: Vol. V
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BARBARA A. EVERLY
Clerk of Bankruptcy Court

By: *Loren Snulderer*
Deputy Clerk

Copies to: Attached List; this 12-22-95 lmm

[Seal of the U.S. Bankruptcy Court]

Date of Issuance: December 22, 1995

Notice sent to:

Paul J. Fitzsimmons
Steele Centre
790 Town Clock Plaza
Dubuque, IA 52001

US Trustee - CR
Law Building Suite 400
225 2nd Street SE
Cedar Rapids, IA 52401

Thomas G. McCuskey
P.O. Box 10020
Cedar Rapids, IA 52410-0020

Bank of New York (Delaware)
P.O. Box 1219
Newark, NJ 07101-1219

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

DEC 22 1995

IN RE:)
) Chapter 7
KENNETH E. DIETERS,)
) Bankruptcy No. 95-21077KD
Debtor.)

BARBARA A. EVERLY, CLERK

ORDER RE MOTION FOR SANCTIONS

On December 20, 1995, the above-captioned matter came on for hearing pursuant to assignment. Debtor appeared in person with Attorney Paul Fitzsimmons. The matter before the Court is a Motion for Sanctions filed by Debtor against Credit Bank of New York (Delaware).

The file and the record made establish that the Bank of New York (Delaware) is a Creditor and is properly listed in the schedules. The record, as made, further establishes that Creditor Bank of New York (Delaware) was provided notice of this hearing by mailing a copy of the Motion to Creditor's mailing address listed as P.O. Box 1219, Newark, New Jersey, 07101-1219.

Evidence was presented after which the Court dictated its findings into the record. The record establishes that on at least five separate occasions since the filing of this Chapter 7 bankruptcy petition, this Creditor has mailed notices to Debtor seeking payment of Debtor's account in violation of the automatic stay imposed by § 362 of the Bankruptcy Code. The evidence further reflects that this Creditor has placed telephone calls to Debtor on at least two occasions since the filing of this bankruptcy petition all in violation of the automatic stay. During one of the telephone conversations, Debtor advised Creditor personally that a bankruptcy petition had been filed. Nevertheless, unauthorized contacts in violation of the automatic stay continued.

The evidence of contacts offered into evidence by Debtor are credible and are supported by documentary evidence received by the Court at the time of hearing. They clearly establish that this Creditor has made numerous contacts after the filing of the bankruptcy petition in violation of the automatic stay. The purpose of the contacts was to collect the balance due on the account owed by Debtor to this Creditor. The Court finds that sanctions should be imposed.

The Court finds that Debtor has suffered actual damage and has been required to suffer emotional upset because of the continuous contacts by this Creditor.

WHEREFORE, for the reasons stated and pursuant to the record made, the Court finds that Debtor has sustained actual damages in the amount of \$1,000.

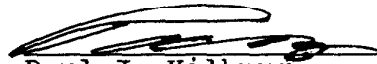
FURTHER, for the reasons set forth herein and for the reasons set forth in the record, the Court finds that based upon the numerous post-petition contacts, punitive damages in the amount of \$2,000 should be awarded in favor of Debtor and against this Creditor.

FURTHER, judgment is entered in favor of Debtor Kenneth E. Dieters and against Creditor Bank of New York (Delaware), P.O. Box 1219, Newark, New Jersey 07101-1219 in the amount of \$1,000 as actual damages.

FURTHER, judgment is entered in favor of Debtor Kenneth E. Dieters and against Creditor Bank of New York (Delaware), P.O. Box 1219, Newark, New Jersey 07101-1219 in the amount of \$2,000 as punitive damages.

FURTHER, as these sanctions are imposed in a Chapter 7 bankruptcy and imposed post-petition, this judgment is not an asset of the estate but is an asset of Debtor subject to collection by Debtor individually.

SO ORDERED this 22 day of December, 1995.


Paul J. Kilburg
U.S. Bankruptcy Judge

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this 12-22-95 lmm

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790 Town Clock Plaza
Dubuque, IA 52001

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